PRISONS BILL.

In moving for the appointment of a Select Committee to report on the Prisons Bill, Mr. Watts said :—

"The Bill is drafted on the lines of the British enactment with such slight modifications as local circumstances rendered necessary. There are in Travancore the following classes of prisons—the Central prison at the Capital, the District prisons at Quilon and Alleppey, the Court Jails at Nagercoil, Quilon and Parur, and the lockups attached to the police stations. As in British India, the lockups are excluded from the operation of the Bill. I have defined the words 'Central Prison' as the one at the Capital, since that Institution requires exceptional treatment in some respects, compared with the smaller prisons in the Districts. In the British Act, an officer called the 'Inspector-General' is appointed to inspect and control all the prisons in each Presidency, and certain powers are conferred on him by the Act. Considering the very small number of prisons here, I have made it optional with Government to appoint a separate officer or to devolve the duties on an officer holding some other appointment. There is another change which I have made. The Madras Act provides a Medical Officer and a Medical Subordinate for each prison. As this is not possible in Travancore, I have provided only a Medical Subordinate for stations where a Medical Officer is not posted. The other alterations are not material. I move that the Bill be referred to a Select Committee consisting of Mr. Krishnaswamy Rao, Mr. Bensley, Mr. Muthunayagam Pillay and the mover, for report within six weeks." He also moved that the publication be deferred till the Bill is reported on by the Committee."

Mr. Thanu Pillay seconded the motion.

Carried

CIVIL PROCEDURE CODE AMENDMENT BILL.

Mr. Krishnaswamy Rao moved that the Civil Procedure Code Amendment Bill be referred to a Select Committee to be composed of Mr. Thanu Pillay, Mr. Ramanatha Rao, Mr. Muthunayagam Pillay and the mover, to report in three weeks.

Mr. Ramanatha Rao seconded the motion.

Carried.

PENAL CODE BILL.

Mr. Krishnaswamy Rao moved that, as some of the members of the Select Committee appointed to consider the Penal Code Bill have now gone out of office, the Committee be reconstituted as follows :—Mr. Watts, Mr. Bensley, Mr. Thanu Pillay, Mr. Ramanatha Rao and the mover.

Mr. Muthunayagam Pillay seconded the motion.

Carried.

REGISTRATION BILL.

Mr. Muthunayagam Pillay moved his first amendment thus :—"In section 3 of the amended Bill, in the definition of the word '*addition*', substitute the words '*and in the case of a native, his caste (if any)*', for the words '*and in case of a Hindu, his caste.*'

He said :—"The words suggested by me are the words used in the original Bill, and also in the Indian Registration Act. The Select Committee have made a change, and give as their reason for so doing, that caste is a special feature of Hinduism. This reason will not be readily accepted by certain people who maintain that they observe caste, though they have ceased to be Hindus. It is unnecessary at present to enquire how far their contention is correct. But it would be well to respect their feelings. For, Mr. Stuart in his Report on the Census of India in 1891, at p. 310 of Volume XIII, says that there are 94,372 such people in the Madras Presidency alone. Mr. Nagum Aiya, our able Census Commissioner, at p. 391 of his last Report says—'It is often said that the Christians have no caste observances amongst them. This is not always so; on the contrary, caste feeling influences

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them, I mean the Native Christian community, to a great extent. I have often noticed that these Christians maintain their caste distinctions with rigidity and even take pride in doing so.' Such being the feeling on the subject, it is best to leave people to state their caste if they have any, or if they choose to state it; and the words used in the British enactment would meet the case."

Mr. Krishnaswamy Rao seconded the motion.

Mr. Watts suggested the addition of the words "but no Christian shall be required by the Registrar or even asked to state his caste."

Mr. Muthunayagum Pillay observed that the insertion of the words "if any" in the section, sufficiently indicated that a declaration of one's caste could not be insisted upon.

Mr. Watts thought it might be desirable to be more specific, as he was aware that complaints have been made of Christians having been required by some Government officials te declare their caste. But he was of opinion that the recordation and publication of these observations in the Proceedings of the Council would be sufficient to indicate the intention of the legislature.

Carried.

Mr. Muthunayagam Pillay moved his second amendment. "In section 13, clause (c) of the amended Bill, substitute the words—'*the party who executed the document, to file a schedule,*' for the words, '*the party who presented the document for registration to file a schedule.*' Further, add the words '*and if the said party fails to do so within a fixed time, the Registrar may allow the party who presented the document for registration to file a schedule setting forth the additional information.*' He said:—

"My object in moving this amendment is to secure notice to the executant of a document of the alteration made in it, so that no undue advantage may be taken behind his back, by allowing others to make corrections in the documents. I would therefore provide that the executant be called on, in the first instance, to supply the defects observed by the Registrar, and if the executant should fail to do so, then the Registrar be allowed to supply it, otherwise."

Mr. Krishnaswamy Rao seconded the motion.

Carried.

Mr. Muthunayagam Pillay then moved to introduce a new Part to the amended Bill, after part III, with the heading—'*of sending to a Registry office, Memoranda of decrees and orders affecting immovable property.*' He proposed the following sections in this new Part:—

"14. When any Civil Court shall, by a decree or order declare any document relating to immovable property which shall have been registered under this Regulation, to be invalid, or when any Civil Court shall pass a decree or order affecting any such document, and such last mentioned decree or order shall create, declare, transfer, limit or extinguish any right, title or interest under such document to or in the immovable property to which it relates, such Court shall cause a Memorandum of the decree or order to be sent to the Sub-Registrar, in whose district the document was originally registered.

"15. When any Civil Court shall, by a decree or order, create, declare, transfer, limit or extinguish any right, title or interest of any person to or in any immovable property situate in any part of Travancore, such Court shall cause a Memorandum of the said decree or order to be sent to the Sub-Registrar or to every Sub-Registrar within whose district the whole or any portion of the property is situate; and such Memorandum shall, so far as may be practicable, describe the property in the manner required by Section 13.

"16. The costs of and attending the registration under Sections 14 and 15, of any Memorandum of a decree or order, shall be costs in the cause, and shall be paid by the Court to the Registering Officer, or to such other person as Our Government shall direct in that behalf."

In support of this amendment he spoke as follows:—

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" Gentlemen,

The chapter proposed to be introduced is not a new provision, so far as Travancore is concerned. Sections 26, 27, & 28 of the old Registration (Regulation No. I of 1042) provide for the registration of decrees. This system has been in force for the last quarter of a century, and should not be abandoned without very cogent reasons. The learned mover of the present Bill in his " statement of objects and reasons " sets forth the following chief grounds, for departing from the present practice :—' In British India, the system of filing in Registration Offices, memoranda of decrees and orders of Civil Courts was abolished. It is not unlikely that, with all the care taken in Civil Courts, memoranda of a large number of the decrees may not have been filed in the Registration Offices. The existence of a decree relating to immovable property, may be as easily ascertained as the existence of a registered encumbrance relating thereto.'

" These objections are untenable. That in British India the system was done away with, is of itself, certainly, no reason for Travancore following suit; the conditions of the two countries differ. That the duty of registering decrees is left to Civil Courts which do not see to its being regularly done, is no fault of the Registration Regulation, but is attributable to the lax supervision of the responsible ministerial officers of the Courts; and the remedy lies, not in abolishing the wholesome provisions of the law, but in strictly enforcing them by calling for periodical returns of the number of decrees passed and the number registered. That intending purchasers of property could as easily find out the existence of decrees by seeking information from the Civil Courts, as from Registry Offices, is not a fact. There are no provisions in the rules of practice of Civil Courts, which entitle a person, who is not a party to a suit, to get information by a mere application, as to what decrees or orders have been passed about a piece of property which he intends to purchase. In the one thousand and one suits which are filed every year in each of our Courts, a would-be purchaser cannot easily find out which suit relates to the particular property he is concerned about; and there is no officer in the Courts who would patiently rummage the records of years to find out the identical decree that is wanted. On the other hand, by a very simple process, the old Registration Regulation enters against each property every decree that is passed relating thereto, and under that law, on the payment of a small fee; every man is of right entitled to make a search of the registers, and every Registrar is in duty bound to facilitate the search. Thus then, none of the reasons urged by the mover seem to warrant the departure from the practice now obtaining under the old law.

" If the old law requires any further justification, it will suffice to refer to two important purposes served by it. It endeavours to maintain as far as possible a complete registry of all titles to immovable property in the general interests of the public. It prevents the perpetration of frauds on innocent purchasers, by enabling them to find out the existence of decrees by the simple process of making a search for encumbrances in a Registry Office."

Mr. Watts seconded the motion.

He thought it was a very important provision—as the registration of memoranda of decrees passed by the Courts affecting any given property and the indexing of such memoranda with the transactions connected with that property, would afford facilities to any person seeking to secure any interest in the property, to ascertain the encumbrances upon it, the parties having rights in it and the nature of those rights, information which without such assistance, it would be impossible for him to obtain, in a country where every member of a Tarwad has an interest in the lands of the Tarwad. The due registration of decrees is a matter which could be enforced by departmental Rules and supervision.

Mr. Ramanatha Rao supported it.

With reference to this proposal, Mr. Krishnaswamy Rao said :—

" I concur in the views expressed by my friends, Mr. Muthunayagom Pillay, Mr. Watts and Mr. Ramanatha Rao, as to the utility of maintaining a registry of landed property which forms the subject of a litigation. It is the practical difficulty of carrying out the necessary registration, through the medium of others than the interested parties, that induced the British Legislature to relieve the Courts of the duty of sending memoranda of decrees for registration. The Registration Gumastah is not attached to the permanent establishment. He has no access to the

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records. He can only prepare memoranda of the decrees that are given to him by the regular establishment. His pecuniary interest is therefore insufficient to secure a complete registration of decrees. In the multifarious duties the Judges and Munsiffs and their establishments have to do, it is too much to expect that they could pay such close attention to what is beyond the ordinary scope of their duties, as will secure satisfactory results. As the registered decrees have longer periods of limitation than others, it will not be disputed that it is the special duty of the Vakeels of the successful parties to bring to the notice of the presiding Judge any omission to transmit the memoranda of the decrees for registration. But as matters now stand, I regret to say that it will not be easy to find the Vakeels who have attended to this duty. As the Council have agreed to the amendment upon the motion of two distinguished members of the bar, I have no doubt that the Vakeels as a body will try their best to secure a complete registration of decrees."

Carried.

Mr. Ramanatha Rao moved the substitution of the following provision of the British Act for section 38 of the Bill. He said :—

" Mr. President,

With your permission I beg to suggest an amendment to section 38 of the Registration Bill as settled by the Select Committee. In the place of the proviso as it now stands " But nothing in this section shall apply to an oral agreement relating to movable property where such agreement is accompanied by delivery of possession" I would suggest the words " unless where the agreement or declaration has been accompanied or followed by delivery of possession "—The amendment now put forward would make the section read as it is in Act III of 1877, section 48. I venture to suggest this alteration because it would, in the first instance, be consonant with the provisions of the British Indian Act which, in this respect is found not to work any peculiar hardship on the diverse races inhabiting the vast British Provinces. Secondly, it is the genius of the Hindu people to make verbal gifts of landed property; and if the law should, as proposed, be not altered, a verbal gift accompanied with a half dozen years' possession may be rendered nugatory by a subsequent registered conveyance of the same property by the donor. Thirdly, I find no reason assigned for the departure made from the British Indian Act in the report of the Select Committee nor in the Statement of Objects and Reasons published along with the Bill."

The Rajah of Perapangady seconded the motion.

Mr. Krishnaswamy Rao opposed the motion and said :—

" I oppose the amendment. I will mention the facts of a case recently decided by the High Court, which will show more emphatically than my words, the mischief which the proposed amendment will work. A leased his property to B. Subsequently he conveyed it to C under a registered deed. When C sued A and B for possession of the property, B set up an oral sale of a date prior to the registered conveyance on which C claimed. As oral sales are not registered no amount of search in the Registration Offices, would have enabled C to discover the alleged prior oral sale. Possession being a thing common to a lease as well as to a sale, was not *per se* sufficient to disclose to C, the real nature of B's title. The Court finally ruled that C's title under the registered conveyance was not affected by the alleged previous oral sale set up by B. In this country, a large extent of property is held under leases. The lessees, as in the case above mentioned, can easily set up oral sales and point to their possession under the lease, as possession under the sale. *Bona fide* purchasers under registered sales will thus run the risk of losing their money, not by their neglect but by the neglect of the person who relies on oral sales, to register his sale. If such a state of things be permitted, it will open a wide door to fraud and perjury of the worst kind and tell upon the value of registered sales, by introducing a dangerous element of uncertainty in transactions relating to real property. The object which Mr. Ramanatha Rao and Mr. Muthunayagam Pillay had in advocating the perpetuation of the system of registering decrees, viz. securing a complete registry of titles to real property as a means of preventing collusion and fraud upon *bona fide* purchasers will be completely frustrated by the acceptance of the amendment. This subject received the most deliberate consideration of the Select Committee who came to the conclusion that oral sales should not take precedence over registered conveyances of real property. What I have said about sales applies also to other forms of alienation."

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The motion was put to the vote and lost.

With the permission of the President, the Perapanad Rajah proposed the following amendments, but withdrew them after a short discussion. He said :—

"Gentlemen,

"I arrived at Trivandrum only on last sunday. After receipt of the Bills to be considered on this day I had hardly time to study the Bills and send the amendments I mean to propose, to the Secretary to this Council to reach him in time for the purpose of sending copies of them to my brother members of this Council. If the President shall decide that the few amendments I have to propose be considered at this meeting I shall propose them. In Mr. Muthunayagom Pillay's 1st amendment to the Registration Bill I prefer the word 'Indian' to that of 'Native.' Europeans call us Natives. Why should we do so. People in this country do not like to be called Natives.

"I would propose to substitute 16 in the place of 18 in Section 3 as under Hindu Law minority ceases at that age. True under the British Indian Majority Act, "every person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen and not before." The framers of that Act do not seem to have been aware that in India or in tropical climates the faculties attain their full development earlier than in colder regions. So long as we have no Majority Act we should entirely be guided by Hindu Law in all questions of proper age to manage one's own affairs. The distinction made between authorities to adopt and other documents, it seems to me, is indefensible in principle.

"The time allowed in Section 14 for the registration of documents executed in British India or Ceylon seems too short. A document relating to property in Travancore was, let us suppose, executed at Simla or at some place further north. 90 days would be hardly enough to enable the executants to appear before the Travancore Registrars or Sub-Registrars in person if they chose to do so.

"I hope I will be permitted to make a few observations regarding this Bill in general. I am not aware if there was any such strong necessity as to justify amending the Registration law now in force to the extent it has been done. With your permission I will quote only a few lines from my memorandum on this Bill I wrote before my appointment as a member of this council. "The Bill under discussion has been framed entirely on the lines of British Indian Registration Act now in force. We should not lose sight of the fact that Travancore is only equal in extent to a third class Collectorate in British India. For instance, Malabar which is only a second class Collectorate has an area of 6,000 square miles whereas the State of Travancore has an area only of 4,700 square miles. When we legislate for Travancore we should always bear in mind that we enact laws for a small area. Having this and the fact that the more a machinery is simple, the greater is its effectiveness and the facility to work with, in mind, the Registration Regulation now in force in Travancore has been framed. Want of symmetry in the corresponding relation between parts makes the whole look awkward. Put a giant's dress upon a little baby. What can look more awkward? The Huzur Registrar stands in the place of a Registrar in a British Collectorate. If a Registrar in a British Collectorate can effectually exercise a general superintendence over all the Sub-Registrars under him, why should not the Huzur Registrar with an assistant do the same here over a number of Registrars."

Resolved that the Bill as amended be read again on a future day of which previous notice shall be given.

DEPARTMENTAL ENQUIRIES BILL.

Resolved that the further consideration of the Bill be adjourned to the next ordinary meeting.

The business of the meeting being over, Mr. Bensley thanked the President for the very kind manner in which he welcomed the new members.

SHUNGRASOOBYER,
President.

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